

# Purchasing Newsletter Special Edition



Utah Division of Purchasing  
and General Services

## 2021 General Legislative Session Bills and Procurement

By Tara Eutsler, Contract Analyst

The 2021 General Legislative Session ended in March, but it is not forgotten. The successful bills must become statutes, defined as written laws passed by a legislative body. Bills passed during the 2021 General Legislative Session and signed by the Governor will become statute on May 5, 2021, unless another specific date was listed in the bill.

A handful of the successful bills have procurement implications. Below is a list of bills followed by the Utah Division of Purchasing. The list is a starting point only and is not intended to be a comprehensive list of bills. A public entity should consult with its legal representative to identify all signed bills that impact it.



Wikimedia Commons: The Utah State Capitol Building by D Ramey Logan

### EFFECTIVE May 5, 2021

BILL #	Title of Bill	CODE # IMPACTED
HB043	Emergency Procurement Declaration	63G-6a-803
SB186	Anti-Boycott Israel Act	63G-27; Has contracting implications
SB188	Procurement Code Revisions	63G-6a-606; 63G-6a-802; 63G-6a-1206.5
SB201	Public Notice Amendments	63G-6a-112

# HB043 Emergency Procurement Declaration

By Tara Eutsler, Contract Analyst

House Bill 043 Emergency Procurement Declaration makes changes to the Utah Procurement Code 63G-6a-803 Emergency Procurements. While multiple changes were made to 63G-6a-803, only two will be discussed: transparency created by new public reporting requirements and limitations to the term length of a contract entered into using the emergency procurement process.

Transparency is an important part of public procurement. To create greater transparency, HB043 adds a public posting requirement. Starting May 5, 2021, and within 14 days of the emergency procurement, an agency must post specific documentation related to the emergency procurement. The documentation includes:

- (i) a written document describing the specific emergency that necessitated the emergency procurement;
- (ii) the name of the highest ranking government official that approved the emergency procurement; and
- (iii) each written contract related to the emergency procurement.

Administrative Rule R33 goes further by requiring an agency to document “the selection of the procurement item.”

For executive branch agencies which fall under the jurisdiction of the Utah Division of Purchasing, the required public posting will be to the [Division's](#)

[Emergency Purchases webpage](#).

As the emergency procurement authority rests with the Chief Procurement Officer, the PURCH-01 Emergency Purchase Process Policy and the Emergency Limited Purchasing Delegation to Executive Directors have been amended to reflect the public posting requirement. Executive branch agencies under the jurisdiction of the Utah Division of Purchasing are required to send their emergency procurement documentation to [purchasingsolicitations@utah.gov](mailto:purchasingsolicitations@utah.gov) within 12 days of the emergency procurement. This allows State Purchasing 2 days to complete the public posting to remain in compliance with the statute.

Along with transparency, HB03 seeks to maintain fairness by limiting the term of a contract to 30 days, if entered into for emergency procurement, or to 60 days when the emergency is related to a natural disaster. Public entities should review HB043's stipulations for legal services contracts. Public entities subject to or that have adopted Administrative Rule R33-8 should be aware of the limitation of R33-8-401 (4) which states, “Emergency procurements are limited to those procurement items necessary to mitigate the emergency.”

Public Entities are reminded to consult with their legal representatives concerning the changes to 63G-6a-803 Emergency Procurements.

## Who Can Make Emergency Procurement Decisions?

The statute grants emergency procurement authority to the Procurement Official of each public entity. For most executive branch agencies, the Procurement Official is the Chief Procurement Officer. Through the *Delegation of Limited Purchasing for Emergency Procurements* delegation, the Chief Procurement Officer delegated emergency procurement authority to the head of each executive branch department under his authority. All emergency procurements by a department must be approved by the executive director BEFORE making an emergency purchase. The executive director has the right to delegate in writing his or her emergency procurement authority to an individual or individuals in his/her department. The executive director is ultimately responsible for emergency procurements made by his or her designees.

## SB186 Anti-Boycott Israel Act

*By Krysta Countryman, State Contract Analyst*

Effective May 5th, 2021, SB186 will translate into Utah Code as 63G-27.

The new statute states that a public entity may not enter into a contract to acquire goods or services from a company, also known as a vendor, that is engaged in an Anti-Boycott against the State of Israel. A boycott action is defined in the bill as refusing to deal, terminating business activities, or limiting commercial relations. The Boycott of the State of Israel is defined as engaging in a boycott action targeting the State of Israel; and companies or individuals doing business in or with the State of Israel; or companies authorized by, licensed by, or organized under the laws of the State of Israel to do business.

### How will the bill impact procurements?

For contracts of \$100,000 and above, a company with 10 or more full time employees must provide written certification that they are not actively engaged in a boycott against the State of Israel. The company must also agree to not engage in a boycott for the entire duration of the contract.

### How has the Division of Purchasing implemented the provisions of SB186?

To satisfy the written confirmation requirement, the Division of Purchasing has amended solicitation forms to include a new section to allow the company to give written certification that they are not currently involved in an anti-boycott against the State of Israel.

To ensure the company is aware that they may not engage in any boycott against the State of Israel during the life of the contract, the Division of Purchasing has added a new section in the terms and conditions titled ANTI-BOYCOTT ISRAEL. The new term states that the company agrees not to engage in a boycott of the State of Israel for the duration of the contract.

### Our recommendation to our fellow public entities:

If this bill caught you by surprise, you still have a few days for implementation prior to it becoming law. Please work with your legal counsel to ensure your organization is in full compliance with SB186, soon to be 63G-27.

## SB201 Public Notice Amendments

*Tara Eutsler, Contract Analyst*

Public entities which complete their public posting solicitations through a third party vendor will not have issues with the amendments to the public notice requirements. SB201 eliminates the newspapers as the sole vehicle for public post of solicitations. Required public posting must now be (1) on the main website for the procurement unit; or (2) on a state website that is owned, managed by, or provided under contract with,

the Division of Purchasing for posting a public procurement notice. The Utah Public Procurement Place (U3P) is still a valid public posting location. A public entity that has questions about U3P can direct those to [scquestadmin@utah.gov](mailto:scquestadmin@utah.gov).

A public entity should review SB201 with its legal representative to determine if the statute impacts its procurement process.



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